tention of the parties as expressly set forth to allow the seal to import full satisfaction against the other wrongdoers. This is substantially the position of the court in the *Dwy* case, which is approved in the principal case, with extended quotations. The Ohio court says that written releases are to be treated as contracts between the parties, stating, "There is nothing peculiar or exceptional about contracts of release, or contracts not to sue or contracts to cease prosecuting a suit. They are presumably to be construed, if in doubt, by the same rules of arriving at the intention of the parties as any other kind of contract." For recent collections of cases with annotations and comment see 92 Am. St. Rep. 872; 111 Am. St. Rep. 282; CHAPIN, TORTS, (1917) § 37. L. E. W.

LIBEL WITHOUT INTENT.—Cases like the one put to the jury by Lusk, J. in *Harrison* v. *Smith*, 20 L. T. at p. 715, that "If the character had been purely imaginary, a creature of fancy, then, although it turns out that the plaintiff bears the name of the fictitious character, it would not be a libel at all" fairly raise the question whether or not intent is an essential element of a libel. This question is, without hesitancy, answered by law writers in the negative. ODGERS, LIBEL AND SLANDER, [5th Ed.] p. 4; *Whiting* v. *Carpenter* (Nebr., 1903) 93 N. W. 926; *Sisler* v. *Mistrot* (Tex., 1917) 192 S. W. 565; *Nash* v. *Fisher*, 24 Wyo. 535, 542. But what is meant by "intent"? The term is used in various senses. It may denote an exercise of the will-power such as is requisite to constitute a voluntary act. When the term is used in this sense, intent is not essential to the tort under discussion, for a lunatic is liable for libel. *Ullrich* v. *N. Y. Press Co.*, 50 N. Y. Supp. 788, *Dickinson* v. *Barber*, 9 Mass. 225.

If by "intent" is meant a design to produce certain results, the question of the essentiality of malice is presented. Upon this question there has been much confusion in the decisions, but "the different views, while the cause of much controversy and misunderstanding, do not in fact create divergence in the substantive law of defamation, as their ultimate effect is identical." 25 CYC. 372. The "ultimate effect" referred to is that if the publication is not justified by proof of its truth or by the privileged occasion of its publication, malice need not be proved to recover compensatory damages. 25 CYC. 374; *Sisler* v. *Mistrot, supra.* Hence, it is no defense that the defendant did not intend to injure the plaintiff (*Curtiss* v. *Mussey*, 6 Gray (Mass.) 261, 273; *Nash* v. *Fisher, supra; Haire* v. *Wilson*, 9 B. & C. 643) for every person is presumed to have intended the natural and probable consequences of his own acts. *Morris* v. *Sailer*, (Mo., 1911) 134 S. W. 98; *Hamlin* v. *Fantl*, 118 Wis. 594.

In a still different sense, the question of "intent" arose in the recent case of *Corrigan* v. *Bobbs-Merrill Co.*, (N. Y., 1920) 126 N. E. 260, *viz.*, whether or not there must be an intent to publish "of and concerning" the plaintiff. In this case, the defendant had published a novel supposing the names used and contents to be purely fictitious, but, in fact, part of the book constituted a libelous attack upon the plaintiff, describing him as one "Cornigan." The court, in holding defendant liable, irrespective of the question of intent to publish "of and concerning" the plaintiff, quoted from Holmes, J. in *Peck* v.

Tribune Co., 214 U. S. 185, "If the publication was libelous, the defendant took the risk. As was said by Lord Mansfield, 'whatever a man publishes, he publishes at his peril.'"

A somewhat different question was decided in *Hanson* v. *Globe Newspaper Co.*, 159 Mass. 293, where the plaintiff's name was mistakenly used in a libelous news item. In considering the question of intent, the court said that extrinsic evidence is admissible to show to whom the defendant intended to apply his remarks, citing *Smart* v. *Blanchard*, 42 N. H. 137; *Goodrich* v. *Davis*, 11 Metc. 473, 480, 484, 485; *Miller* v. *Butler*, 6 Cush. (Mass.) 71.

The case of *Smith* v. *Ashley*, 11 Metc. (Mass.) 367, was, in its facts, almost identical with the *Corrigan Case*, and the court held the publisher not liable because he had no knowledge that the story referred to any existing person; hence, no intent to publish "of and concerning" the plaintiff. The court said, "To charge the defendant, it must be proved that he published the libel wrongfully, and *intentionally*, and without just cause or excuse."

In accord with the *Corrigan Case* is the leading English case of *Hulton & Co.* v. *Jones*, [1910] A. C. 20, where the decision rested on the principle that the law looks at the tendency and consequences of the publication, not at the intention of the publisher. Said Lord Loreburn, L. C., on p. 24, "He (defendant) cannot show that the libel was not of and concerning the plaintiff by proving that he never heard of the plaintiff. His intention * * * is inferred from what he did. His remedy is to refrain from defamatory words." Fletcher Moulton, L. J., dissented, saying, "It is, to my mind, settled law that a defendant is not guilty of libel * * * unless he intended (the defamatory writing) to refer to the plaintiff." See articles supporting the majority, 60 U. OF PA. L. REV. 365, 461; 23 HARV. L. REV. 218; supporting the minority, 58 U. OF PA. L. REV. 166-169; 25 LAW QUART. REV. 341. The English case differs from the *Corrigan Case* and *Smith* v. *Ashley* in that both the publisher and the author of the novel intended and supposed it to be purely fictitious, both as to names and contents, whereas in the *Corrigan Case* and *Smith* v. *Ashley* the author apparently intended to attack the plaintiff. But this difference seems immaterial, because the intent of the author would not be imputed to the publisher anyway.

It is indisputable that *Hanson* v. *Globe Newspaper Co.*, *supra*, is overwhelmed by contrary authorities of other jurisdictions. See *Taylor* v. *Hearst*, 107 Cal. 262; *Hulbert* v. *New Nonpareil Co.*, 111 Iowa 490; *Peck* v. *Tribune Co.*, 214 U. S. 185; *Every* v. *Evening Pub. Co.*, 144 Fed. 916. And it seems that if "intent" is not essential to liability for defamatory publications when the term is used to denote "an exercise of the will power" (see *supra*) nor when it denotes "a design to produce certain results" (also *supra*), it is an inconsistency in principle to hold that intent to publish "of and concerning" the plaintiff is essential to the liability of the defendant. It is worthy of notice that the Massachusetts decisions are inconsistent *inter se* in this respect. *Cf. Smith* v. *Ashley* (1846) *supra*, *Curtis* v. *Mussey* (1856) *supra*, and *Hanson* v. *Globe Newspaper Co.* (1893), *supra*. L. K.